

### REMARKS

Claims 1-23 are currently pending in the captioned patent application. Claims 1, 13, 15, and 19-23 have been amended. Support for the amendments may be found throughout the specification and the drawings of the application as originally filed.

For at least the reasons set forth below, applicants respectfully request reconsideration of the Office Action's rejections.

### Interview Summary

Applicants' representative would like to thank Examiner Danneman for the courtesy of a telephone interview conducted on November 19, 2009. During the interview, the 35 U.S.C. §103 rejections were discussed in view of proposed amendments to independent Claim 1. The Examiner indicated that Salvo (U.S. Pat. No. 6,341,271) does not appear to disclose the recitations of: (1) each of the measurement instruments being configured to generate at least one data signal representative of respective amounts and compositions of the inventory material in the supplier's container at the supplier workplace and in the customer's container at the customer workplace, wherein the generated data signals representative of the respective compositions of the inventory material are associated with a product identifier and a container identifier, and (2) an inventory management server configured to process the generated data signals representative of the respective compositions of the inventory material to preserve at least one container for containing only one type or certain types of inventory material. No agreement was reached on specific claim amendments.

35 U.S.C. § 103(a) Rejections of Claims 1-23

Claims 1-14 and 19-23 stand rejected under 35 U.S.C. §103(a) as obvious in view of Salvo. Claims 15-18 stand rejected under 35 U.S.C. §103(a) as obvious in view of a proposed combination of Salvo and a Technology Report entitled Simple Object Access Protocol (SOAP)(hereinafter “SOAP”) accessed from <http://xml.coverpages.org/soap.html>.

The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy . . . .

According to MPEP §2141, it is Office policy to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. §103. A determination of obviousness under §103 requires the determination of the following factual inquiries: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating evidence of secondary considerations, if any. Objective evidence or secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing and skepticism of experts are relevant to the issue of obviousness and must be considered in every case in which they are present. When

evidence of any of these secondary considerations is submitted, the Examiner must evaluate the evidence. MPEP §2141. *See Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57527 (Oct. 10, 2007).

Based on these factual inquiries, the obviousness or nonobviousness of the claimed subject matter is determined. A conclusion of obviousness must be supported with some articulated reasoning with some rational underpinning; mere conclusory statements are not sufficient. *See* 72 Fed. Reg. 57526 at 57528-29.

As noted in MPEP §706.02(j) (entitled “Contents of a 35 U.S.C. 103 Rejection”):  
“To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” (quoting *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)). Also, as stated in MPEP §2142 (entitled “Legal Concept of Prima Facie Obviousness”):

The legal concept of prima facie obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process. . . The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

....

To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all

factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person.

Also, as noted in MPEP §2143.01 (entitled, "Suggestion or Motivation To Modify the References"), it is stated in pertinent part:

IV. MERE STATEMENT THAT THE CLAIMED INVENTION IS WITHIN THE CAPABILITIES OF ONE OF ORDINARY SKILL IN THE ART IS NOT SUFFICIENT BY ITSELF TO ESTABLISH PRIMA FACIE OBVIOUSNESS - A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE - If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

VI. THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE - If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Independent Claims 1 and 19-23

For at least the following reasons, applicants submit that the Office Action has not established a *prima facie* case of obviousness against the independent claims of the present application, because Salvo fails to teach, disclose or suggest all of the elements recited in the claims as described in more detail below.

Independent Claim 1, as amended, recites, among other things (emphasis added):

at least one measurement instrument operatively associated with the supplier's container and at least one measurement instrument operatively associated with the customer's container, each of the measurement instruments being configured to generate at least one data signal representative of respective amounts and compositions of the inventory material in the supplier's container at the supplier workplace and in the customer's container at the customer workplace, wherein the generated data signals representative of the respective compositions of the inventory material are associated with a product identifier and a container identifier;

at least an inventory management server in communication with the monitoring mail server, the inventory management server configured to receive at least the inventory information from the monitoring mail server via an Internet connection, the inventory management server being configured to process the inventory information for presentation on at least one website, and wherein the inventory management server is configured to process the generated data signals representative of the respective compositions of the inventory material to preserve at least one container for containing only one type or certain types of inventory material.

Applicants respectfully submit that the teachings of Salvo do not render Claim 1, as amended, obvious at least because Salvo does not teach, disclose or suggest the above-referenced recitations. As a result, applicants respectfully submit that Claim 1 is patentable over Salvo and the other references cited in the Office Action.

In addition to the above, each of independent Claims 1 and 19-23 recite in part: “at least one container containing an amount of a supplier’s inventory material at a first monitored location *at a supplier workplace*” and “at least one container containing an amount of a customer’s inventory material at a second monitored location *at a customer workplace*” (emphasis added). It can be seen that both the supplier’s inventory and the customer’s inventory are monitored in accordance with each of the independent claims. This dual monitoring of both the inventory at a supplier workplace, as well as the inventory at a customer workplace, provides significant advantages over Salvo. In particular, the supplier is able to manage inventory with knowledge of the whole supply chain, i.e., by knowing the inventory (and hence predictable demand) of the customer, as well as knowing the current inventory *at a supplier workplace*. In this manner, the supplier is better equipped to anticipate short falls in the supply chain on a real time basis and take corrective action on the supplier’s end.

In contrast to the pending claims, Salvo does not teach, disclose or suggest monitoring inventory both “at a first monitored location at a supplier workplace” and “at a second monitored location at a customer workplace,” as recited in claim 1, for example. Salvo further does not teach, disclose or suggest generating “at least one data signal representative of respective amounts and compositions of the inventory material in the supplier’s container at the supplier workplace and in the customer’s container at the customer workplace” as recited in claim 1, for example. Turning to Figure 1 of Salvo and its corresponding text description, it is noted that the only receptacles 104 monitored are those associated with the customer (manufacturing site 103). In addition, Salvo describes its inventory monitoring process as follows (at col. 4, lines 59-67):

The indicators 108 send signals indicative of the inventory amount 151 to a site controller 112. The site controller 112 is connected to receive signals from inventory storage receptacles and on-site inventory areas. These on-site storage areas, which contain inventory 150 and include a sensor 108 as needed, may include, a warehouse 113 and on-site transport vehicles, for example a rail car 111, vessel 117, and a truck 110, that have delivered inventory 150 to the manufacturing site 103.

It can be seen that Salvo does not teach, disclose or suggest corresponding monitoring of the inventory of the supplier *at a supplier workplace*. Salvo is silent with regard to an inventory management system that includes monitoring inventory both “at a first monitored location at a supplier workplace” and “at a second monitored location at a customer workplace.” Furthermore, Salvo is silent with respect to an inventory management system having a “monitoring mail server” and an “inventory management server,” as recited in claim 1, for example.

Applicants respectfully submit that the teachings of Salvo do not render the presently claimed invention obvious at least because Salvo is only concerned with monitoring inventory at the customer’s own manufacturing site without regard to coordinated monitoring of inventory at the supplier’s workplace, which is a significant improvement in supply chain management provided by the present invention. As a result, applicants respectfully submit that Claim 1 is patentable over Salvo and the other references cited in the Office Action.

Independent Claims 19-23 recite similar features as Claim 1. As a result, applicants respectfully submit that Claims 19-23 are patentable for at least the reasons advanced above with respect to Claim 1.

In view of the foregoing, applicants respectfully request reconsideration and allowance of the pending claims.

Reservation of Arguments

Applicants submit that the dependent claims are allowable at least by virtue of their dependency from independent claims which, as describe above, are patentable over the cited references. Applicants reserve the right, however, to make supplemental arguments as may be necessary, because the dependent claims include additional features that further distinguish from the cited references. A detailed discussion of these distinctions is believed to be unnecessary at this time in view of the fundamental distinctions already set forth in the above remarks.

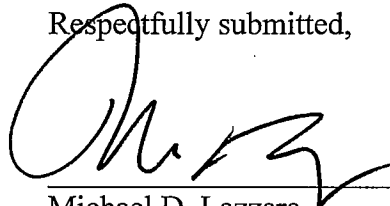


SUMMARY

Based on at least the present amendments and the foregoing remarks, applicants respectfully request reconsideration and allowance for the pending claims of the present application.

However, if the Examiner believes that issues remain outstanding with the present application, applicants request a supplemental telephone interview to address any such issues.

Respectfully submitted,

  
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